

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1098 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

CHETAN BHIKABHAI KAHAR

Versus

STATE OF GUJARAT

Appearance:

MR RS SANJANWALA, Advocate, for the Petitioner.

MR.U.R.BHATT,AGP, for the Repondents.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 08/07/96

ORAL JUDGEMENT

Petitioner Chetan Bhikhabhai Kahar has filed the present petition under Article 226 of the Constitution of India challenging the legality and validity of the order of detention dated 3-2-96 passed against his brother Jagdish Bhikhabhai Kahar (hereinafter referred to as "the detenu") under 3 (1) of the Gujarat Prevention of

Anti Social Activities Act, 1985 (hereinafter referred to as " the Act") by the Commissioner of Police , Vadodara City (herein after referred to as "the detaining authority").

In the grounds of detention supplied to the detenu, the detaining authority has placed reliance on three cases filed under the provisions of the Bombay Prohibition Act and one case under sections 323, 324, 337 and 114 of the Indian Penal Code and section 135 of the Bombay Police Act. Out of these four cases, the last one under the Bombay Prohibition Act is at the investigation stage while the rest of the cases are pending trial. Beside this, the detaining authority has also placed reliance on the statements of three witnesses of the area where the detenu is alleged to have been carrying on his anti-social and naferous activities of extorting monies by beating innocent citizens and inviting quarrels with them on flimsy grounds. Considering these materials, the detaining authority arrived at the finding that the detenu is a "bootlegger" and a "dangerous person" within the meaning of section 2 (b) and section 2 (c) ,respectively, of the Act and with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of public order, it was necessary to pass the order of detention against him and, therefore, the impugned order is passed, which is under challenge in the present petition.

Mr. Sanjanwala, learned Advocate appearing for the petitioner, has raised number of contentions. However, it is not necessary to deal with each of them as the present petition can be disposed off on the first contention itself. Mr.Sanjanwala has submitted that the subjective satisfaction arrived at by the detaining authority that the detenu is a bootlegger is not genuine as the alleged activities of the detenu as a bootlegger do not affect adversely or are not likely to affect adversely the maintenance of public order. In the submission of Mr.Sanjanwala, the offences alleged against the detenu in the grounds of detention and also the allegations made by the witnesses could not be said to have created any feeling of insecurity or panic or terror among the members of the public of the area in question giving rise to the question of maintenance of public order. Mr. Sanjanwala further submitted that even the subjective satisfaction arrived at by the detaining authority branding the detenu as a dangerous person is not genuine as only one case is registered against him and, therefore, the detenu is not a habitual offender. In support of her submission, reliance is placed by Mr.

Sanjanwala on the decision of the Supreme Court in the case of Piyush Kantilal Mehta vs Commissioner of Police, Ahmedabad city AIR 1989 SC 491. In the said case, the Supreme Court has laid down as under:

"It may be that the detenu is a bootlegger within the meaning of S.,2 (b) of the Act, but merely because he is a bootlegger, he cannot be preventively detained under the provisions of the Act unless, as laid down in sub-section (4) of S.3 of the Act, his activities as a bootlegger affect adversely or are likely to affect adversely the maintenance of public order. A person may be very fierce by nature, but so long as the public generally are not affected by his activities or conduct, the question of maintenance of public order will not arise. In order that an activity may be said to affect adversely the maintenance of public order, there must be material to show that there has been a feeling of insecurity among the general public. If any act of a person creates panic or fear in the minds of the members of the public upsetting the even tempo of life of the community, such act must be said to have a direct bearing on the question of maintenance of public order. The commission of an offence will not necessarily come within the purview of 'public order'.."

I have gone through the statements of the witnesses in the present case and, in my view, the facts in the present case are identical to the case before the Supreme Court and, therefore, the ratio laid down by the Supreme Court in the case of Piyush Kantilal Mehta (Supra) is applicable to the present case. Suffice it to say, the witnesses in the present case have alleged that the detenu, by indulging in use of force and violence and by illegal sale of liquor, has created an atmosphere of fear and terror by beating innocent citizens. It is also alleged that the detenu is indulging in anti-social activities and that the activities were against public order.

Considering the statements of the witnesses, I am of the view that they are vague and general and no reliance can be placed on the same. As far as branding the detenu as a dangerous person, I am of the opinion that the subjective satisfaction arrived at by the detaining authority is also not genuine as undisputedly only one offence under sections 323, 324, 337 and 114 of the IPC has been registered against him and, therefore,

the detenu cannot be said to be a habitual offender. Thus, the requirements of branding a person as a "dangerous person" as enumerated in section 2 (c) of the Act have not been attracted in the present case and therefore the petition is required to be allowed by holding thalkt the continuous detention of the detenu is vitiated.

In the result, this petition is allowed. The impugned order of detention dated 3-2-1996 is quashed and set aside. The detenu Jagdish Bhikhabhai Kahar is directed to be set at liberty forthwith if his detention is not required for any other purpose. Rule is made absolute accordingly with no order as to costs.

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